

may fish for, possess, or retain up to 200 lb (90.7 kg) of shucked or 25 bu (8.81 hL) of in-shell scallops, and may possess up to 50 bu (17.6 hL) of in-shell scallops seaward of the VMS Demarcation Line. A vessel issued an incidental catch general category scallop permit that fishes in the NGOM may fish for, possess, or retain only up to 40 lb of shucked or 5 U.S. bu (1.76 hL) of in-shell scallops, and may possess up to 10 bu (3.52 hL) of in-shell scallops seaward of the VMS Demarcation Line.

(b) *Total allowable catch.* The total allowable catch for the NGOM scallop management area shall be specified through the framework adjustment process. The total allowable catch for the NGOM scallop management area shall be based on the Federal portion of the scallop resource in the NGOM. The total allowable catch shall be determined by historical landings until additional information on the NGOM scallop resource is available, for example through an NGOM resource survey and assessment. The ABC/ACL as specified in § 648.53(a) shall not include the total allowable catch for the NGOM scallop management area, and landings from the NGOM scallop management area shall not be counted against the ABC/ACL specified in § 648.53(a).

(1) *NGOM annual hard TACs.* The annual hard TAC for the NGOM is 70,000 lb (31.8 mt) for the 2013 and 2014 fishing years.

(2) Unless a vessel has fished for scallops outside of the NGOM scallop management area and is transiting the NGOM scallop management area with all fishing gear stowed in accordance with § 648.23(b), no vessel issued a scallop permit pursuant to § 648.4(a)(2) may possess, retain, or land scallops in the NGOM scallop management area once the Regional Administrator has provided notification in the FEDERAL REGISTER that the NGOM scallop total allowable catch in accordance with this paragraph (b) has been reached. Once the NGOM hard TAC is reached, a vessel issued a NGOM permit may no longer declare a state-only NGOM scallop trip and fish for scallops exclusively in state waters within the NGOM. A vessel that has not been issued a Federal scallop permit that fishes exclusively in state waters is not

subject to the closure of the NGOM scallop management area.

(3) If the TAC specified in paragraph (b)(1) of this section is exceeded, the amount of NGOM scallop landings in excess of the TAC specified in paragraph (b)(1) of this section shall be deducted from the NGOM TAC for the subsequent fishing year, as soon as practicable, once scallop landings data for the NGOM fishery is available.

(c) *VMS requirements.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have declared a trip under the scallop DAS program, a vessel issued a scallop permit pursuant to § 648.4(a)(2) that intends to fish for scallops in the NGOM scallop management area or fishes for, possesses, or lands scallops in or from the NGOM scallop management area, must declare a NGOM scallop management area trip and report scallop catch through the vessel's VMS unit, as required in § 648.10. If the vessel has a NGOM permit, the vessel can declare either a Federal NGOM trip or a state-waters NGOM trip. If a vessel intends to fish any part of a NGOM trip in Federal NGOM waters, it may not declare into the state water NGOM fishery.

(d) *Gear restrictions.* Except scallop vessels issued a limited access scallop permit pursuant to § 648.4(a)(2)(i) that have properly declared a trip under the scallop DAS program, the combined dredge width in use by, or in possession on board, LAGC scallop vessels fishing in the NGOM scallop management area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

[73 FR 20131, Apr. 14, 2008, as amended at 75 FR 36576, June 28, 2010; 76 FR 43770, 43797, July 21, 2011; 77 FR 20741, Apr. 6, 2012; 78 FR 27108, May 9, 2013]

§ 648.63 General category Sectors and harvesting cooperatives.

(a) *Procedure for implementing Sector allocation proposals.* (1) Any person may submit a Sector allocation proposal for a group of LAGC scallop vessels to the Council, at least 1 year in advance of the start of the proposed sector, and request that the Sector be implemented through a framework procedure specified at § 648.55, in accordance with the

conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation be initiated, the Council shall follow the framework adjustment provisions of §648.55. Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector remain subject to the LAGC scallop vessel regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (c) of this section, and comply with the conditions and restrictions of this paragraph (b).

(1) *Participation.* (i) Only LAGC scallop vessels are eligible to form Sectors, and Sectors may choose which eligible permit holders to include or exclude in the sector, consistent with all applicable law. A Sector may establish additional criteria for determining its membership, provided such criteria are specified in the Sector's operations plan and are consistent with all applicable law. Any interested group that meets the eligibility criteria may submit a proposal for a Sector. To initiate the process of Sector creation, a group (two or more) of permit holders must agree to cooperate and submit a binding plan for management of that Sector's allocation of total allowable catch. Vessels that do not choose to participate in a sector will fish under the IFQ program and remain in the non-sector scallop fishery.

(ii) Participation by incidental catch or NGOM scallop vessels in the Sector is subject to approval by the Council as part of the action that implements the Sector allocation, provided the details of such participation are specified in the Sector's operations plan. A Sector allocation may be harvested by non-Sector members, provided the Sector operations plan specifies that the Sector may authorize non-Sector vessels

to harvest the Sector allocation. In this case, if the Sector is approved, the landings history of the participating non-Sector vessels may not be used in the calculation of future Sector shares and may not be used as scallop catch history for such vessels. The operations plan must specify how such participating non-Sector shall be subject to the rules of the Sector.

(iii) Once a vessel operator and/or vessel owner signs a binding contract to have his/her vessel participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(iv) Vessels that fish in the LAGC scallop fishery outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for IFQ used, or catch by the vessel, prior to implementation of the Sector.

(v) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(iii) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(vi) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the scallop regulations for non-Sector vessels specified under this part either for any period specified in the final decision of penalty or sanction.

(vii) If a pre-existing Sector accepts a new member, the percentage share brought to the Sector is based on that vessel's average qualification landings at the time it joins the Sector (*i.e.*, the vessel is treated as a "Sector of one" and a share based on the appropriate adjusted TACs is calculated). This new single-vessel-Sector share is added to the existing Sector. If a vessel leaves a Sector, that Sector's share is reduced by the individual vessel share the exiting vessel had when it joined the Sector.

(viii) A vessel may not be a member of more than one Sector. Once a vessel enters into a Sector, it cannot fish during that fishing year under the regulations that apply to the common pool. Additionally, vessels cannot shift from one Sector to another during a single fishing year. Therefore, if a vessel leaves a Sector for any reason, it cannot participate in the general category scallop fishery during the remainder of that fishing year.

(2) *Allocation of TAC to Sectors.* (i) The sector allocation shall be equal to a percentage share of the ACL allocation for IFQ scallop vessels specified in § 648.53(a), similar to an IFQ scallop vessel's IFQ as specified in § 648.53(h). The sector's percentage share of the IFQ scallop fishery ACL catch shall not change, but the amount of allocation based on the percentage share will change based on the ACL specified in § 648.53(a).

(ii) *Sector share determination.* When a Sector proposal is submitted, NMFS shall verify the contribution percentage as specified in § 648.53(h)(2)(iii) for each vessel listed as a Sector member. The Sector's share shall be the sum of the participating vessels' contribution percentages.

(iii) A sector shall not be allocated more than 20 percent of the ACL for IFQ vessels specified in § 648.53(a)(4)(i) or (ii).

(3) Once a Sector's allocation is projected to be harvested, Sector operations will be terminated for the remainder of the fishing year.

(4) If a Sector's allocation is exceeded in a given fishing year, the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanction pursuant to 15 CFR part 904. If a Sector exceeds its allocation in more than one fishing year, the Sector's authorization to operate may be withdrawn.

(5) A vessel operator and/or vessel owner participating in a Sector is not subject to the limit on the vessel's catch based on the vessel's own IFQ or contribution percentage as defined in § 648.53(h)(2)(iii), provided the vessel is participating in the Sector and carries on board a Letter of Authorization to

participate in the Sector and exempts the vessel from its IFQ limit and any other related measures. The Sector shall determine how the Sector's allocation will be divided between its participating vessels, regardless of whether the catch by a participating vessel exceeds that vessel's own IFQ.

(6) Each vessel operator and/or vessel owner fishing under an approved Sector must comply with all scallop management measures of this part and other applicable law, unless exempted under a Letter of Authorization, as specified in paragraph (b)(11) of this section. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operations Plan specified in paragraph (c) of this section and the Letter of Authorization issued pursuant to paragraph (b)(11) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(7) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(8) It shall be the responsibility of each Sector to track its activity and internally enforce any provisions adopted through procedures established in the operations plan and agreed to through the Sector contract. Sector contracts should describe graduated sanctions, including grounds for expulsion of Sector member vessels. The Sector and participating Sector vessels shall be subject to NMFS enforcement action for violations of the regulations pertaining to Sectors and other regulations under 50 CFR part 648. Vessels operating within a Sector are responsible for judgments against the Sector. Sector operations plans shall specify how a Sector will monitor its landings to assure that Sector landings do not exceed

the Sector allocation. At the end of the fishing year, NMFS shall evaluate landings using VMS and any other available information to determine whether a Sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan. If a Sector exceeds its TAC, the Sector may have its authorization as a Sector withdrawn by the Regional Administrator, after consultation with the Council, and may be subject to enforcement action.

(9) Permanent or temporary transfers of allocation between Sectors or between Sector and non-Sector participants is prohibited. For purposes of harvesting a Sector allocation only, vessels under contract to a Sector are assumed to be part of that Sector for the duration of that contract.

(10) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(11) If a Sector is approved as specified in paragraph (d)(3) of this section, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or owner for the participating Sector vessel. The Letter of Authorization shall authorize participation in the Sector operations and may exempt the participating vessel from the requirement that the vessel cannot exceed its own IFQ and related measures. The Letter of Authorization may include requirements and conditions deemed necessary to ensure effective administration of and compliance with the Sector's operations plan and the Sector's allocation.

(c) *Operations plans.* (1) A group that wants to form a Sector and receive an allocation must submit a legally binding operations plan to the Council and the Regional Administrator. The operations plan must be agreed upon and signed by all members of the Sector and, if approved, shall constitute a contract.

(2) The operations plan among all of the Sector members must have, at a minimum, the following components:

- (i) A list of all participants;
- (ii) A contract signed by all participants indicating their agreement to abide by the operations plan;

(iii) An entity name, address, phone number, and the name and contact information for a Sector representative (a manager or director) that NMFS can contact regarding Sector management issues;

(iv) A plan explaining how the Sector will harvest its allocation, including methods to inform NMFS of changes in those arrangements over the year;

(v) The original distribution of catch history of vessels in the Sector (maintaining vessel data confidentiality);

(vi) A plan detailing how the Sector will avoid exceeding its allocated TACs, including provisions for monitoring and enforcement of the Sector regulations, and documenting all landings and discards;

(vii) Rules for entry to and exit from the Sector, including sanctions and procedures for removing members who do not comply with the operations plan;

(viii) Procedure for notifying NMFS if a member is no longer part of the Sector and the reason for leaving;

(ix) The process through which the operations plan can be amended by Sector members;

(x) If the Sector plans to authorize non-Sector vessels to harvest scallops allocated to the Sector, details of such arrangements must be described in the operations plan;

(xi) Any documents and analyses necessary to comply with the National Environmental Protection Act must be submitted to NMFS. The development of the analytical document is the responsibility of the applicants.

(xii) Any other information determined to be necessary and appropriate.

(d) *Sector review, approval, and revocation.* (1) A Sector shall submit its operations plan and any NEPA documents to the Regional Administrator and the Council no less than 1 year prior to the date that it wishes to begin operations under the Sector. The Council shall consider this plan in the course of the periodic framework adjustment or specification process and may, if approved, implement it through either of those processes. After Council approval of a Sector, the details of its operation shall be addressed between the Sector and NMFS, although the New England

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Fishery Management Council may review and provide comment on the proposed details.

(2) The Regional Administrator may withdraw approval of a Sector at any time if he/she, in consultation with the New England Fishery Management Council, determines that Sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the FMP. Withdrawal of approval of a Sector shall be completed after notice and comment rulemaking, pursuant to the Administrative Procedure Act.

(3) A Sector is required to resubmit its operations plan to the Regional Administrator no later than July 1 of each year, whether or not the plan has changed. Once the submission documents specified under paragraphs (a)(1) and (c)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

[73 FR 20131, Apr. 14, 2008, as amended at 77 FR 20741, Apr. 6, 2012]

§ 648.64 Yellowtail flounder sub-ACLs and AMs for the scallop fishery.

(a) As specified in § 648.55(d), and pursuant to the biennial framework adjustment process specified in § 648.90, the scallop fishery shall be allocated a sub-ACL for the Georges Bank and Southern New England/Mid-Atlantic stocks of yellowtail flounder. The sub-ACLs for the 2013 fishing year are specified in § 648.90(a)(4)(iii)(C) of the NE multispecies regulations.

(b) *Georges Bank accountability measure.* (1) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Georges Bank yellowtail flounder sub-ACL for the scallop fishery is exceeded, the area defined by the following coordinates, bounded in the order stated by straight lines except where noted, shall be closed to scallop fishing by vessels issued a limited access scallop permit for the period of time specified in paragraph (b)(2) of this section:

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GEORGES BANK YELLOWTAIL ACCOUNTABILITY MEASURE CLOSURE

Point	N. lat.	W. long.
GBYT AM 1	41°50'	(1) (2)
GBYT AM 2	40°30.75'	(3)
GBYT AM 3	40°30'	66°40'
GBYT AM 4	40°40'	66°40'
GBYT AM 5	40°40'	66°50'
GBYT AM 6	40°50'	66°50'
GBYT AM 7	40°50'	67°00'
GBYT AM 8	41°00'	67°00'
GBYT AM 9	41°00'	67°20'
GBYT AM 10	41°10'	67°20'
GBYT AM 11	41°10'	67°40'
GBYT AM 12	41°50'	67°40'
GBYT AM 1	41°50'	66°51.94'

¹The intersection of 41°50' N. lat. and the U.S.-Canada maritime boundary.

²From Point CAIIA3 connected to Point CAIIA4 along the U.S.-Canada maritime boundary.

³The intersection of 41°30.75' N. lat. and the U.S.-Canada maritime boundary.

(2) *Duration of closure.* The Georges Bank yellowtail flounder accountability measure closed area shall remain closed for the period of time, not to exceed 1 fishing year, as specified for the corresponding percent overage of the Georges Bank yellowtail flounder sub-ACL, as follows:

(i) For years when the Closed Area II Sea Scallop Access Area is open, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
3 or less	October through November.
3.1–14	September through November.
14.1–16	September through January.
16.1–39	August through January.
39.1–56	July through January.
Greater than 56	March through February.

(ii) For fishing years when the Closed Area II Sea Scallop Access Area is closed to scallop fishing, the closure duration shall be:

Percent overage of YTF sub-ACL	Length of closure
1.9 or less	September through November.
2.0–2.9	August through January.
3.0–3.9	March and August through February.
4.0–4.9	March and July through February.
5.0–5.9	March through May and July through February.
6.0 or greater	March through February.

(c) *Southern New England/Mid-Atlantic accountability measures—(1) Limited access scallop vessels.* (i) Unless otherwise specified in § 648.90(a)(5)(iv) of the NE multispecies regulations, if the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL for the